

AMENDMENT dated 11/10/2006
Application no. 10/712,469
App. filing date: 11/12/2003

REMARKS

This amendment is responsive to the Office Action dated 05/10/2006. Applicant has cancelled claims 1, 2, 14 and 15. Applicant has amended claims 3, 6-13, 16, and 19-22. Claims 23-44 are withdrawn. Claims 3-13 and 16-22 are pending.

Applicant has cancelled claims 1 and 2 and amended claim 3 to place it in independent form and include the limitations of claims 1 and 2 from which had depended. Claims 6 and 8-13 have been amended to change their dependencies from claim 1 to claim 3.

Applicant has cancelled claims 14 and 15 and amended claim 16 to place it in independent form and include the limitations of claims 14 and 15 from which had depended. Claims 1-22 have been amended to change their dependencies from claim 14 to claim 16.

Claims 7, 9-13, and 20-22 have been amended to change "predetermined CPR therapy period" to "recommended CPR therapy period", for consistent terminology.

The Examiner has rejected claims 3 and 16 under 35 USC § 103(a) as being unpatentable over Snyder (US Patent 6,553,257) in view of Walcott (US patent 6,556,865). Applicant traverses the rejection of these claims and the claims dependent therefrom. Walcott teaches a method providing electrotherapy to a patient in VF in a manner which will reduce the likelihood of the heart going into PEA (pulseless electrical activity) after a defibrillation shock. The Examiner cites a portion of Walcott at col. 13, lines 13-16 in support of the statement that Walcott discloses comparing the viability index to a predetermined CPR threshold index. But the threshold which Walcott refers to is a threshold value for the viability index to determine whether to deliver a particular waveform to the patient. At col. 13, lines 16-21, Walcott discloses that duration, amplitude and/or frequency of a pretreatment electrotherapy waveform may be increased if the viability index is low. Walcott does not disclose any determination of CPR duration based the viability index.

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The Examiner argues that Walcott teaches that "since the duration of ventricular fibrillation depends on the duration of CPR therapy (see col. 12, lines 11-20), the viability index is essentially determining a recommended CPR therapy period."¹ This is not what Walcott teaches. The cited portion of Walcott states that the viability of a heart in ventricular fibrillation for a relatively long period may depend on other factors including, for example, whether effective CPR has been administered.² While Walcott says that effective CPR may be a factor influencing viability, Walcott does not say that the duration of ventricular fibrillation depends on the duration of CPR, or suggest that CPR duration be determined based on a viability index. Walcott does not mention a CPR threshold at all.

Claim 3 and claim 16 require the step of comparing the viability index to a predetermined CPR therapy threshold to determine a recommended CPR therapy period. This limitation is not found in either of the cited references nor suggested by either of them. For at least this reason, the subject matters defined by claims 3 and 16, and the claims which depend from these independent claims, are not unpatentable under 35 USC § 103(a) over Snyder in view of Walcott.

Other grounds of rejection having been rendered moot by cancellation of claims, or in view of the allowability of independent claims 3 and 16 as argued above, need not be addressed herein.

CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims.

Applicant believes that no additional fees are needed for processing of this Amendment. However, if any fees are due, please charge any such fees or credit any

¹ Office Action, para. 11, lines 4-6.

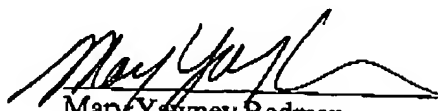
² Walcott, col. 12, lines 11-15.

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overpayment to deposit account number 13-2546. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Respectfully submitted,

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Mary Yawney Redman
Registration No. 29,881

Medtronic Emergency Response Systems Inc.
P.O. Box 97006
Redmond WA 98073-9706

Telephone: 425-867-4465
Facsimile: 425-867-4142